Montana Law Review

Volume 55
Issue 1 *Winter 1994*

Article 10

January 1994

State v. Cameron: Making the Alford Plea an Effective Tool in Sex Offense Cases

Alice J. Hinshaw

STATE V. CAMERON: MAKING THE ALFORD PLEA AN EFFECTIVE TOOL IN SEX OFFENSE CASES

Alice J. Hinshaw

I. INTRODUCTION

Guilty pleas account for an overwhelming percentage of the convictions in state and federal courts today.[1] The guilty plea procedure offers relief to the continually overcrowded court dockets and provides benefits to both the State[2] and the defendant.[3] The most obvious benefit to the State is efficiency—the speedy disposition of cases in which the evidence supports guilt.[4]

In cases where the evidence strongly supports guilt, defendants may benefit by entering Alford pleas.[5] The Alford plea allows defendants to enter a guilty plea while continuing to maintain their innocence.[6] A defendant may opt to enter an Alford plea for many reasons other than admitting guilt; the defendant may want to plea bargain for a predictable, and often shorter, sentence or to protect others from the rigors, expense, or publicity of a trial.[7] Also, the evidence may seem overwhelming against the defendant, making an expensive and rigorous defense seem futile.[8]

Regardless of the defendant's reason for entering an Alford plea, the effectiveness of the process depends, to a large degree, on the efficiency of the process.[9] Process efficiency is highly relative to the procedural standards employed by courts that accept the guilty pleas.[10]

Acceptance of Alford pleas in sex offense cases in Montana particularly gives rise to review of court procedures and standards. When defendants in sex offense cases maintain their innocence following an Alford plea, the defendants cannot successfully complete

---

1. William H. Erickson, *The Finality of a Plea of Guilty*, 48 NOTRE DAME LAW. 835, 835 (1973) (estimating the number of convictions stmming from guilty pleas to be greater than 90%); *see also* JAMES E. BOND, PLEA BARGAINING AND GUILTY PLEAS § 1.4 (2d ed. 1983) (indicating that 5% of criminal cases in New York City go to trial).

2. BOND, *supra* note 1, § 1.4.

3. Curtis J. Shipley, *The Alford Plea: A Necessary but Unpredictable Tool for the Criminal Defendant*, 72 IOWA L. REV. 1063, 1063 (1987).

4. BOND, *supra* note 1, § 1.4.

5. *See* North Carolina v. Alford, 400 U.S. 25 (1970).

6. For a complete discussion of the Alford doctrine, see *infra* part II.A.

7. BOND, *supra* note 1, § 3.55(c).

8. *Id.*

9. Erickson, *supra* note 1, at 835.

10. BOND, *supra* note 1, § 1.5.

the sex offender treatment program.[11] The consequence of maintaining innocence in these cases often negates the potential benefits that the plea offers the defendant and the State, thus creating an inherent conflict. Currently in Montana, prosecutors are reluctant to offer the plea in sex offense cases, and judges only rarely accept the plea.[12]

State v. Cameron[13] provides a good example of the difficulties that arise from using the Alford plea in sex offense cases. The defendant in *Cameron* claimed that neither the court nor his attorney adequately informed him of the consequences of his Alford plea. This Note discusses the conflict raised by the *Cameron* case. Part II explains the origin of the Alford plea and describes its use in Montana. Part III offers an overview of the *Cameron* decision, including a brief synopsis of the court's reasoning. Part IV discusses the consequences of the Alford plea and the need for clearer guidelines for the Alford plea in Montana. Part V offers suggestions for how the Montana Legislature can provide for better procedures for Montana's use of the Alford plea. Finally, this Note urges procedural changes intended to benefit both the State and the defendant.

II. The Origin of the Alford Plea

A. *North Carolina v. Alford*

The Alford plea arose from *North Carolina v. Alford*, where the defendant was accused of first degree murder.[14] Henry Alford faced strong evidence of guilt and could provide little evidence for his defense.[15] Upon the advice of counsel, Alford pleaded guilty to the lesser charge of second degree murder while continuing to maintain his innocence.[16] The district court sentenced Alford to 30 years in prison, the maximum penalty allowed for second degree

11. To successfully complete the sex offenders treatment program, a person, as part of the therapy, must admit to committing the offense for which the person was convicted.

12. The information in this statement draws heavily from telephone interviews with: Thomas C. Honzel, District Judge, First Judicial District, Lewis and Clark County, Montana (Nov. 16, 1993); Betty Wing, Deputy County Attorney, Missoula County, Montana (Nov. 9, 1993); and Carolyn Clemens, Deputy County Attorney, Lewis and Clark County, Montana (Nov. 16, 1993).

13. 253 Mont. 95, 830 P.2d 1284 (1992).

14. North Carolina v. Alford, 400 U.S. 25 (1970). At the time of Henry Alford's case, North Carolina statutory law mandated the death penalty for first degree murder unless the jury recommended a sentence of life imprisonment. *Id.* at 27 n.1. However, if a defendant pleaded guilty to first degree murder, the mandatory sentence was life imprisonment. *Id.*

15. *Id.* at 27.

16. *Id.* at 27-28.

murder.[17]

After sentencing, Alford appealed his conviction, claiming that his guilty plea resulted from fear and coercion.[18] The state court upheld Alford's conviction in 1965, finding that Alford knowingly and willingly entered the plea.[19] Following several appeals to higher courts,[20] Alford obtained relief from the United States Court of Appeals for the Fourth Circuit, which reversed Alford's conviction on the ground that Alford involuntarily entered the guilty plea.[21] The United States Supreme Court reversed the appellate court and reasserted the standard set forth in *Brady v. United States*[22] concerning voluntary and intelligent choices to plead guilty. The Court in *Alford* held that when a defendant pleads guilty, making a "voluntary and intelligent choice among the alternative courses of action open to the defendant,"[23] the plea is not "compelled within the meaning of the Fifth Amendment."[24] The Court addressed the possible conflict in justifying guilty plea convictions of defendants who maintain their innocence.[25] The Supreme Court ruled that the trial court must establish a factual basis consistent with the Federal Rules of Criminal Procedure.[26] The federal rules require that courts accepting the Alford plea establish the factual basis from evidence other than the courts' interrogation of defendants.[27] In *Alford*, the Court analogized Alford's plea with the *nolo contendere* plea,[28] citing no constitutional difference be-

17. *Id.* at 29. The court cited Alford's long history of criminal activity. Alford's record included convictions for murder, armed robbery, transporting stolen goods, forgery, and carrying a stolen weapon. *Id.* at 29 n.4.

18. *Id.* at 29.

19. *Id.*

20. Following the 1965 state court rejection of Alford's plea, Alford petitioned for a writ of habeus corpus in the United States District Court, and then in the Court of Appeals for the Fourth Circuit. Both of these courts denied the writ, citing the reasoning of the state court. *Id.* at 29-30. Then, in 1967, Alford applied again for a writ of habeus corpus in the federal district court, and again, the district court denied the writ. *Id.* at 30.

21. *Id.*

22. 397 U.S. 747 (1970).

23. *Alford*, 400 U.S. at 31.

24. *Id.* (citing the reasoning in *Brady* that when a defendant enters a plea of guilty with the hope of avoiding a possible death penalty, that guilty plea is not compelled within the meaning of the Fifth Amendment).

25. *Brady*, 397 U.S. at 748 (stating that courts may justify convictions on guilty pleas because of the defendants' admission of guilt and the waiver of the right to a trial).

26. *Alford*, 400 U.S. at 38 n.10. Rule 11(f) of the Federal Rules of Criminal Procedure provides in pertinent part: "Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea."

27. Shipley, *supra* note 3, at 1066; *see also* Iowa v. Hanson, 344 N.W.2d 725, 728 (Iowa Ct. App. 1983).

28. *Alford*, 400 U.S. at 38 n.8. In *nolo contendere* cases, the plea is considered an

tween the two.[29] Noting the uniform use of the *nolo contendere* plea, the Court in *Alford* readily accepted Alford's plea as presenting no conflict with the defendant's constitutional rights.[30]

B. The Alford Plea in Montana

The Montana Legislature, in 1991, enacted a provision allowing a defendant to plead guilty while publicly maintaining his or her innocence.[31] Since then, the Montana Supreme Court has reviewed four sex offense cases involving the Alford plea.[32] The first case, *State v. Miller* (*Miller I*), established certain guidelines that Montana courts should consider in accepting an Alford plea or in considering a motion to withdraw the plea.[33] Miller pleaded guilty pursuant to a plea bargain arrangement with the State.[34] Before the sentencing hearing, Miller moved to withdraw his guilty plea because his attorney did not fully inform him of the consequences of pleading guilty.[35] The Montana Supreme Court in *Miller I* relied on section 46-16-105 of the Montana Code to review both the district court's acceptance of the Alford plea and its denial of Miller's withdrawal motion.[36] The court also adopted rules

---

implied confession of guilt, and the court need make no determination about the facts establishing guilt.

29. *Id.* at 35-37. The only difference that the Court found between the Alford plea and the *nolo contendere* plea was that the *nolo contendere* plea requires no factual basis. *Id.* at 37; *see* Shipley, *supra* note 3, at 1066. For a more complete discussion of the *nolo contendere* plea acceptance standards, see 21 AM. JUR. 2D *Criminal Procedure* § 497 (1981).

30. *Alford*, 400 U.S. at 37. The Court in *Alford* dealt with the constitutionality of a defendant who is unwilling to admit guilt, yet waives the right to a trial, thus accepting the sentence.

31. In pertinent part, § 46-12-212(2) of the Montana Code states:

> A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty to the offense if the defendant considers the plea to be in the defendant's best interest and if a factual basis exists for the plea.

MONT. CODE ANN. § 46-12-212(2) (1993).

32. State v. Miller, 253 Mont. 395, 833 P.2d 1040 (1992) [hereinafter *Miller II*]; State v. Yother, 253 Mont. 128, 831 P.2d 1347 (1992); State v. Cameron, 253 Mont. 95, 830 P.2d 1284 (1992); State v. Miller, 248 Mont. 194, 810 P.2d 308 (1991) [hereinafter *Miller I*]. *Miller I* and *Miller II* involved the same defendant, who sought to overturn his Alford plea for two different reasons.

33. *Miller I*, 248 Mont. 194, 810 P.2d 308.

34. *Id.* at 195, 810 P.2d at 308.

35. *Id.* at 195-96, 810 P.2d at 309.

36. *Id.* Section 46-16-105 of the Montana Code provides:

> (1) Before or during trial, a plea of guilty may be accepted when:
>
> (a) the defendant enters a plea of guilty in open court; and (b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.
>
> (2) At any time before or after judgment the court may, for good cause shown, permit the guilty plea to be withdrawn and a plea of not guilty substituted.

from earlier cases concerning the withdrawal of traditional guilty pleas.[37] The court stated:

> The fundamental purpose of allowing a defendant to withdraw a guilty plea is to prevent the possibility of convicting an innocent man. . . . Accordingly, a plea of guilty will be deemed involuntary where it appears that the defendant was laboring under such a strong inducement, fundamental mistake, or serious mental condition that the possibility exists he may have pled guilty to a crime of which he is innocent.[38]

The court in *Miller I* upheld the district court's denial of the defendant's motion to withdraw his Alford plea, citing the lack of a fundamental mistake.[39]

Then, in *State v. Cameron*, the court considered Cameron's claims of inadequate defense counsel, inadequate factual basis for accepting the Alford pleas, and the defendant's confusion about the Alford plea.[40] The court in *Cameron* used the *Miller I* criteria to limit the change of plea to defendants who were ignorant of their rights and of the consequences of their plea.[41] The court added little to the guidelines for acceptance or withdrawal of the Alford plea by Montana courts. However, by strictly relying on only the information clearly stated in the district court record, the court in *Cameron* may have established a basis for placing more responsibility on the district court for informing defendants of rights and consequences of the Alford plea.

Following *Cameron*, the supreme court, in *State v. Yother*, based its acceptance of the Alford plea on statements made in the plea agreement between the defendant and the State.[42] The court in *Yother* held that the district court is not bound by the plea agreement, the court has the right to impose the maximum sentence allowed by law, and the defendant had no right to withdraw his guilty plea.[43]

The majority opinion in *Yother* failed to address the conflict

---

MONT. CODE ANN. § 46-16-106 (1993).

37. *Miller I*, 248 Mont. at 197, 810 P.2d at 309 (citing State v. Long, 227 Mont. 199, 201, 738 P.2d 487, 489 (1987)). In *Miller I*, the court cited three factors when considering the withdrawal of guilty pleas: (1) whether the district court adequately ascertained the defendant's understanding of the plea; (2) the timing of the withdrawal motion; and (3) the interplay of a plea bargain in the guilty plea. *Id.*

38. *Id.* at 197, 810 P.2d at 310 (citations omitted) (emphasis omitted) (following State v. Pelke, 143 Mont. 262, 271, 389 P.2d 164, 169 (1964)).

39. *Id.*

40. *Cameron*, 253 Mont. 95, 830 P.2d 1284.

41. *Id.* at 100-01, 830 P.2d at 1288 (citing *Miller I*, 248 Mont. at 197, 810 P.2d at 310).

42. *Yother*, 253 Mont. at 130-32, 831 P.2d at 1348-49.

43. *Id.* at 137, 831 P.2d at 1352-53.

that arises when a person accused of a sex offense enters an Alford plea. However, in a special concurrence, Justice Gray, joined by Justice Trieweiler, acknowledged the inherent problem arising in cases like *Yother* and *Cameron*.[44] Noting unexpected consequences already experienced by the defendant, Justice Gray acknowledged the probability that Yother would experience additional Alford plea consequences as he continued to deny his guilt.[45]

The fourth Montana Supreme Court case dealing with the Alford plea in sex offense cases was *State v. Miller* (*Miller II*), in which the defendant attempted to withdraw his Alford pleas based on the victims' recantations.[46] The supreme court upheld the district court decision based upon evidence that the recantations were not true.[47] The court in *Miller II* based its reasoning on the well-settled principle that a district court decision will not be overturned unless the district court has clearly abused its discretion.[48] The *Miller II* case dealt with changes in evidence (the victims' testimony) and adds no insight into the discussion of the inherent conflict of Alford pleas entered in sex offense cases.

Currently in Montana, the guidelines for accepting and for considering the withdrawal of the Alford plea are unclear and imprecise. Section 46-12-212(2) of the Montana Code specifically allows the defendant to enter an Alford plea.[49] Section 46-16-105 of the Montana Code requires that the district court inform the defendant of the consequences of a guilty plea and of the maximum penalty allowed by law and allows the court to permit withdrawal of the plea.[50] Case law narrowly interprets the statutes as allowing withdrawal only when courts have clearly denied defendants their constitutional rights or when defendants clearly misunderstood the consequences of their plea. Also, the supreme court will not disturb the district court's denial of a motion to withdraw a guilty plea except in cases where the district court has abused its discretion.[51] The *Cameron* decision raises questions about the information of-

---

44. *Id.* at 138, 831 P.2d at 1353.

45. *Id.*

46. *Miller II*, 253 Mont. 395, 833 P.2d 1040.

47. *Id.* at 397-98, 833 P.2d at 1042.

48. *Id.* at 397, 833 P.2d at 1041.

49. MONT. CODE ANN. § 46-12-212(2). For the applicable statutory text, see *supra* note 31. Thus, § 46-12-212(2) allows for defendants' analysis of their own best interest, without guidelines for court determination of how the defendant reached that opinion.

50. MONT. CODE ANN. § 46-16-105.

51. *See, e.g.*,*Miller II*, 253 Mont. at 397, 833 P.2d at 1041.

fered to defendants concerning the consequences of an Alford plea and withdrawing the plea. These issues will be discussed in the following Part.

III. THE *CAMERON* DECISION

A. Factual Background

On April 18, 1990, the State of Montana charged James Cameron with two counts of felony sexual assault.[52] Cameron had allegedly sexually molested both M.S., his daughter, and E.P., the daughter of a woman whom he had dated.[53] The alleged sexual assaults took place between 1985 and 1989.[54]

Cameron pleaded not guilty to the sexual assaults.[55] Two weeks before his trial was to begin, Cameron's attorney filed a request to withdraw as counsel for the defense. The district court granted the request and appointed a new defense attorney.[56] Before the new trial date, Cameron became dissatisfied with the new defense attorney's representation and requested that his original attorney resume the position as defense counsel.[57]

When Cameron's original attorney in the case refused to return to the case, Cameron sought counseling from a licensed professional counselor.[58] On the professional counselor's advice, on the morning of his trial Cameron spoke with the new defense attorney about the Alford plea.[59] Cameron entered Alford pleas to both counts of sexual assault.[60] The district court then spoke with Cameron concerning: (1) Cameron's right to have the amended information read; (2) the maximum possible punishment for sexual assault; (3) Cameron's right to a trial by jury; (4) his right to call witnesses on his behalf; (5) his right to an appeal, if found guilty in a jury trial; (6) his right to remain silent; and (7) his current state of mind.[61] The court also questioned Cameron about whether he understood the general nature of the Alford plea.[62] Following the State's offer of proof and the court order for both a sexual offender evaluation and a presentencing investigation, the district court ac-

52. *Cameron*, 253 Mont. at 97, 830 P.2d at 1285.
53. *Id.*
54. *Id.* at 97, 830 P.2d at 1285-86.
55. *Id.* at 97, 830 P.2d at 1286.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.* at 98, 830 P.2d at 1286.
60. *Id.*
61. *Id.* at 98-99, 830 P.2d at 1286-87.
62. *Id.* at 99, 830 P.2d at 1287.

cepted the Alford pleas.[63]

Prior to the sentencing hearing, Cameron moved to withdraw his guilty pleas.[64] Claiming that "good cause" existed for allowing the withdrawal, Cameron specified inadequate counsel, his misunderstanding about the finality of the Alford plea, and deprivation of constitutional rights as the basis for the motion.[65] The district court denied Cameron's motion, stating that the argument lacked good cause, and Cameron appealed.[66]

B. The Court's Reasoning

The Montana Supreme Court, in *Cameron*, held that the district court did not abuse its discretion when it refused to allow Cameron to withdraw his pleas of guilty to the two counts of felony sexual assault.[67] The court first applied a good cause analysis for the withdrawal of guilty pleas in Montana.[68] This statutory requirement provides the basis for current Montana case law governing the withdrawal of guilty pleas.

Under Montana law:

> A change of plea will be permitted only if it fairly appears that defendant was ignorant of his rights and the consequences of his act, or he was unduly and improperly influenced either by hope or by fear in making the plea, or if it appears the plea was entered under some mistake or misapprehension.[69]

The court in *Cameron* relied on its holding in *Benjamin v. McCormick*[70] in stating that the withdrawal of a guilty plea must be based on a showing that the defendant labored under a "fundamental mistake or misunderstanding."[71]

The supreme court centered its analysis of Cameron's understanding of the Alford plea on the adequacy of both the district court's actions and the defense counsel's advice. In affirming that

---

63. *Id.*

64. *Id.*

65. *Id.* at 100, 830 P.2d at 1287 (Cameron claimed that the district court erred in denying his request that a defense psychologist be allowed to examine the alleged victims, thus depriving him of the right to due process and equal protection).

66. *Id.*

67. *Id.* at 100, 830 P.2d 1287-88.

68. *Id. See* MONT. CODE ANN. § 46-16-105(2) (1993).

69. State v. Mesler 210 Mont. 92, 96, 682 P.2d 714, 716 (1984); *see also* Benjamin v. McCormick, 243 Mont. 252, 256, 792 P.2d 7, 10 (1990).

70. 243 Mont. 252, 792 P.2d 7.

71. *Cameron*, 253 Mont. at 101, 830 P.2d at 1288 (relying on previous holdings in cases dealing with plea withdrawals); *see Miller I*, 248 Mont. 194, 197, 810 P.2d 308, 310; *Benjamin*, 243 Mont. at 254, 792 P.2d at 10.

the district court acted properly in accepting Cameron's guilty pleas, the supreme court looked to the district court record and the colloquy between the judge and the defendant. The supreme court noted that the district court, before accepting the plea of guilty, offered to read aloud the amended information.[72] The district court also informed Cameron of the maximum sentence that could be imposed for the crimes charged[73] and the rights to which he was entitled should he choose to plead not guilty and go to trial.[74]

After explaining to Cameron the rights he would have if he elected to go to trial, the district court asked the defendant whether he generally understood the Alford plea.[75] Based on the district court's procedure, the supreme court observed that the record failed to show that the district court inadequately informed Cameron of the consequences of his Alford pleas.[76]

The court in *Cameron* further denied Cameron's claim that his court-appointed counsel failed to adequately inform him of the consequences of his Alford pleas.[77] The court applied the adequacy-of-counsel test developed in *Strickland v. Washington*.[78] In accordance with the two-pronged *Strickland* test, the defendant must establish that the counsel's performance was deficient and that because of the deficient performance, the defendant was denied a fair trial.[79] Ultimately, the defendant must show that "but for counsel's deficient performance, the defendant would not have pled guilty, and would have insisted on going to trial."[80] In its analysis, the court relied heavily upon the attorney's statements that he had worked on the case regularly, was ready for trial, and had testified to the district court about Cameron's understanding of the Alford plea process.[81]

Just as the supreme court found that the district court had an

---

72. *Cameron*, 253 Mont. at 106, 830 P.2d at 1291 (Cameron did not request that the district court read the amended information).

73. *Id.* at 98, 830 P.2d at 1286.

74. *Id.* at 98-99, 830 P.2d at 1286. The district court informed Cameron that: (1) he had a right to a trial by jury; (2) during that trial, he could call witnesses to testify on his behalf; (3) he had a right to remain silent during the trial; (4) if convicted at trial, he had a right to appeal that conviction to the Montana Supreme Court; and (5) he had a right to be represented by an attorney. *Id.*

75. *Id.* at 99, 830 P.2d at 1287.

76. *Id.* at 104, 830 P.2d at 1290.

77. *Id.* at 103, 830 P.2d at 1289.

78. *Id.* at 102-03, 830 P.2d at 1288-89 (relying on Strickland v. Washington, 466 U.S. 668, 687 (1984)).

79. *Cameron*, 253 Mont. at 102, 830 P.2d at 1288-89.

80. *Id.* at 102, 830 P.2d at 1289 (quoting State v. Senn, 244 Mont. 56, 59, 795 P.2d 973, 975 (1990)).

81. *Id.*

adequate basis on which to accept Cameron's Alford pleas, it found that the district court correctly denied Cameron's motion to withdraw the pleas.[82] Relying on Montana statutory law[83] and the guidelines established in *Miller I*,[84] the court in *Cameron* affirmed the district court's finding that the defendant had failed to show good cause for plea withdrawal as required under section 46-16-105(2) of the Montana Code.[85] The court noted that the district court record failed to show that Cameron based his guilty plea "upon a fundamental mistake or misunderstanding as to its consequences."[86]

The supreme court also held that Cameron failed to show that the district court denied him due process of law in violation of the Montana or United States Constitution.[87] The court reasoned that although the district court did not tell Cameron about the specific consequences, the court's instruction was adequate because it did not mislead Cameron.[88]

The supreme court also noted that the district court established a sufficient factual basis on which to accept the Alford pleas.[89] The supreme court cited a presentencing statement of the prosecutor made to the district court, which listed various prospective witnesses and described the expected testimony of each witness.[90]

IV. Inherent Conflicts Remain Unresolved

The primary focus in *Cameron* is the defendant's claim that he labored under a fundamental mistake about the consequences of the plea when he entered his guilty pleas. The supreme court dismissed Cameron's claim concerning his inability to successfully

82. *Id.* at 100-01, 830 P.2d at 1288.

83. Mont. Code Ann. § 46-16-105(2) ("At any time before or after judgment the court may, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.").

84. 248 Mont. 194, 810 P.2d 308.

85. *Cameron*, 253 Mont. at 100, 830 P.2d 1288.

86. *Id.* at 101, 830 P.2d at 1288 (quoting *Benjamin*, 243 Mont. at 256, 792 P.2d at 10).

87. *Id.* at 103, 830 P.2d at 1290. The supreme court dismissed Cameron's claim that the district court failed to adequately inform him of the consequences of his plea. *Id.* at 102, 830 P.2d at 1289. Cameron claimed that the district court should have informed him of the consequences "that to admit to the offenses would probably require him to attend an inpatient's sex offender treatment program at the State Prison, and continued assertion of innocence would prevent him from completing that program." *Id.*

88. *Id.* at 103-04, 830 P.2d at 1289-90.

89. *Id.* at 104-05, 830 P.2d at 1290-91. The court relied upon procedures followed in North Carolina v. Alford, 400 U.S. 25, 37-38 (1970), and *In re* Brown, 185 Mont. 200, 204, 605 P.2d 185, 187 (1980).

90. *Cameron*, 253 Mont. at 104-05, 830 P.2d at 1290-91.

complete the sex offender treatment program if he continued to maintain his innocence.[91] The court's action follows the common-law doctrine that the appellate court reviews only those issues presented to the district court and that are contained in the district court record. However, the *Cameron* decision leaves unanswered the question of how Montana courts should deal with the inherent conflict in allowing a defendant in a sex offense case to enter an Alford plea.

The inherent conflict that arises when a defendant who enters an Alford plea and then cannot successfully complete the sex offender program likely will resurface until the legislature either prohibits the use of the Alford plea in sex offense cases or sets out clear guidelines for the acceptance of Alford pleas in sex offense cases. At least two factors support a specific mandatory judicial procedure in this circumstance: (1) A defendant has a right to be informed of the consequences of a plea that substantially affect the defendant's sentence and parole, and (2) judicial efficiency demands that procedural safeguards be employed to reduce the possibility of appeals.

A. The Consequences of an Alford Plea to a Defendant in a Sex Offense Case

The Montana Supreme Court has stated that a plea of guilty must be entirely voluntary.[92] Before accepting a plea of guilty, courts must determine that defendants understand the consequences of making such a plea and must inform defendants of such consequences if they have not already been advised.[93] The consequences may include "collateral" consequences. The distinction between "direct" and "collateral" consequences suggests the test that Montana courts should use to determine the minimum information courts should provide to defendants.

Direct consequences are generally those directly affecting the length of time a defendant is to be incarcerated.[94] The Fourth Circuit Court of Appeals has stated that consequences are direct when they have a "definite, immediate and largely automatic effect on

91. *Id.* at 95, 103, 830 P.2d at 1289 (Cameron had not specifically noted that consequence and its implications in his motion to withdraw his guilty pleas).

92. State v. McBane, 128 Mont. 369, 371, 275 P.2d 218, 219 (1954).

93. *Id.*

94. Durant v. United States, 410 F.2d 689, 692 (1st Cir. 1969); *see also* Spradling v. United States, 421 F.2d 1043, 1045 (5th Cir. 1970). *But see* Smith v. United States, 324 F.2d 436, 441 (D.C. Cir. 1963) (holding that the defense counsel's failure to inform the defendant that he would be ineligible for parole if he pleaded guilty did not invoke a consequence that justified the withdrawal of the guilty plea).

the range of defendant's punishment."[95] Although the Montana Supreme Court has not yet considered whether the consequences peculiar to an Alford plea are "direct" consequences, the automatic effects that the plea has on the defendant's treatment and ability to gain parole certainly support that argument.

A collateral consequence is "one whose effect upon the range of punishment is neither automatic, certain, nor severe."[96] For example, courts generally find that loss of good time from the defendant's sentence is a collateral consequence.[97] Also, in *Fama v. United States*, the Second Circuit Court of Appeals ruled that a district judge need not inform the defendant of possible restrictions on parole eligibility as a result of a guilty plea.[98] The Sixth Circuit Court of Appeals went so far as to hold that a guilty plea was voluntary even though the defendant had been misinformed about parole eligibility.[99] In *Brown v. Perini*, the Sixth Circuit held that the misinformation did not invalidate the guilty plea because parole eligibility is a collateral consequence, and the court is not bound to inform the defendant of collateral consequences.[100]

Montana cases offer few examples of how the courts categorize consequences.[101] The Montana Supreme Court, in *Gladue v. Eighth Judicial District*, found that the defendant had maintained his innocence and had pleaded guilty only upon his attorney's advice that his chances in court were not very good following the conviction of a co-defendant.[102] The court found that a serious question remained as to the voluntariness of the defendant's guilty plea.[103]

Then, in *Benjamin v. McCormick*, the Montana Supreme Court stated that "when the guilty plea is based upon a fundamental mistake or misunderstanding as to its consequences, the sentencing court, at its discretion, may allow the defendant to withdraw the plea."[104] The court in *Benjamin* found that the defendant's guilty plea was based on error. The defendant had

---

95. Cuthrell v. Director, 475 F.2d 1364, 1366 (4th Cir. 1973).

96. BOND, *supra* note 1, § 3.44.

97. Johnson v. Puckett, 930 F.2d 445, 448 n.2 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 252 (1991); *see also* Hutchison v. United States, 450 F.2d 930, 931 (10th Cir. 1971); Commonwealth v. Brown, 372 N.E.2d 530, 530 (Mass. 1978).

98. Fama v. United States, 901 F.2d 1175, 1177-78 (2d Cir. 1990).

99. Brown v. Perini, 718 F.2d 784, 787-88 (6th Cir. 1983).

100. *Id.*

101. *See, e.g.*, Benjamin v. McCormick, 243 Mont. 252, 792 P.2d 7 (1990); Gladue v. Eighth Judicial District, 175 Mont. 509, 575 P.2d 65 (1978).

102. *Gladue*, 175 Mont. at 510-11, 575 P.2d at 66.

103. *Id.* at 512, 575 P.2d at 67.

104. *Benjamin*, 243 Mont. at 256, 792 P.2d at 10.

been misinformed of the consequences of his plea by the court, prosecutor, and defense attorney.[105] Both of these cases ruled on consequence issues, yet neither offers definitive guidance on how to categorize consequences.

The court in *Miller I* considered whether the district court had given adequate consideration to consequences such as having to report to a probation officer, the inability to freely leave the state, and the possibility that owning a firearm would be barred.[106] The court ruled that the district court's omission of these minor consequences of the defendant's probation and deferred sentencing provisions did not amount to a "fundamental" mistake.[107]

Another 1991 case, *State v. Imlay*,[108] may offer some guidance about whether the consequences of an Alford plea, with regard to the required completion of a sex offender program, should be considered direct consequences. *Imlay* is not an Alford plea case, nor does it involve a conviction based on the guilty plea. In *Imlay*, the jury convicted the defendant of sexual assault, and his suspended sentence was conditioned on his successful completion of a sex offender program.[109] Since the defendant refused to admit his guilt, he was unable to comply with a mandatory condition of the sex offender program, which is to admit guilt for the offense.[110] The district court revoked the suspended sentence because the defendant failed to complete the sex offender program and ordered that the defendant serve his full sentence at the state prison.[111]

In *Imlay* the question arose whether a convicted person may be compelled to admit guilt as a condition of a suspended sentence. The Montana Supreme Court ruled that the district court, in revoking the suspended sentence, subjected Imlay to a penalty for maintaining his innocence after conviction for a sex offense.[112]

The *Imlay* decision departed from the established rule in

105. *Id.* The court, prosecutor, and defense attorney told Benjamin that he would be incarcerated for only one year, while the mandated sex offender program lasted two years. *Id.*

106. *Miller 91*, 248 Mont. at 198, 810 P.2d at 309-10.

107. *Id.* at 198, 810 P.2d at 310.

108. 249 Mont. 82, 813 P.2d 979 (1991), *cert. granted*, 112 S. Ct. 1260, *cert. dismissed*, 113 S. Ct. 444 (1992).

109. *Imlay*, 249 Mont. at 83-84, 813 P.2d at 980-81.

110. *Id.* at 84-85, 813 P.2d at 981.

111. *Id.* at 86, 813 P.2d at 982.

112. *Id.* at 90, 813 P.2d at 985. Although the *Imlay* case involves a conviction by jury trial rather than an Alford plea, the consequences to Imlay closely resemble those experienced by the defendant in *Cameron*. Both Cameron and Imlay faced longer prison terms because they maintained their innocence following convictions for sex offenses.

Montana that ineligibility for parole is not a penalty.[113] The court in *Imlay* specifically overruled *State v. Donnelly*, stating that the court must protect a defendant's right against self-incrimination and "prohibit augmenting a defendant's sentence because he refuses to confess to a crime."[114] *Donnelly* was a sex offense case in which the defendant refused to testify and was thereafter denied parole because he could not successfully complete the sex offender program by admitting his guilt.[115] The court in *Donnelly* had stated that the defendant's failure to complete the sex offender program was not a penalty, but simply meant continued ineligibility for parole.[116] By overruling *Donnelly*, the court in *Imlay* opened the door for challenges by defendants like Cameron to claim that they are being penalized for maintaining their innocence.

The court in *Cameron* declined to discuss whether Cameron was penalized for maintaining his innocence or to categorize the consequences of Cameron's pleas. However, Justice Trieweiler, in the dissent, found support in the court record for the claim that Cameron's plea was based on a fundamental mistake or misunderstanding of its consequences.[117] Justice Trieweiler noted the testimony given by Cameron's attorney during the district court hearing on Cameron's motion to withdraw his pleas.[118] The attorney failed to advise Cameron that no possibility of a favorable sex offender evaluation existed, thus no possibility of avoiding a prison sentence existed, if Cameron entered Alford pleas.[119] The attorney further led Cameron to believe that guilty pleas might lead to a sentence that would not include serving time in prison.[120] This misinformation, given its obvious consequences to Cameron, clearly supports an argument for legislative reform concerning information provided a defendant by the district court.

---

113. *See* State v. Donnelly, 244 Mont. 371, 382, 798 P.2d 89, 96 (1990). *But see* State v. Cavanaugh, 207 Mont. 237, 241, 673 P.2d 482, 484 (1983), where the court stated restrictions on eligibility for parole or furlough programs are part of a defendant's sentence. The court in *Cavanaugh* went on to say that "unavailability of parole directly affects the length of time an accused will have to serve in prison. . . . It would seem that such a major effect on the length of possible incarceration would have great importance to an accused in considering whether to plead guilty." *Id.*

114. *Imlay*, 249 Mont. at 91, 813 P.2d at 985.

115. *Donnelly*, 244 Mont. at 382, 798 P.2d at 96.

116. *Id.*

117. *Cameron*, 253 Mont. at 109-10, 830 P.2d at 1293-94.

118. *Id.*

119. *Id.* at 110, 830 P.2d at 1294.

120. *Id.*

B. *Increased Efficiency in the Judicial System*

Regardless of how a court categorizes the consequences in cases like *Cameron*, judicial efficiency demands that the court inform the defendant of the consequences. Rules and standards for the acceptance of guilty pleas are intended to produce a full and accurate record of the proceedings where a defendant pleads guilty to a criminal offense.[121] The United States Supreme Court, in *McCarthy v. United States*, emphasized the need to discourage "the numerous and often frivolous post-conviction attacks on the constitutional validity of guilty pleas."[122] The Court noted that the goals of Rule 11 of the Federal Rules of Criminal Procedure—ascertaining the voluntariness of the plea and providing a complete record—are promoted when the court personally interrogates the defendant.[123]

State courts may use procedures different from federal courts in accepting guilty pleas and ascertaining that the plea is voluntary, but the basic United States constitutional requirement of due process governs both court systems.[124] The United States Supreme Court, in *Henderson v. Morgan*, held that the state court judge must inform the defendant of the critical elements of the charge against him.[125] If a judge fails to adequately inform the defendant of the elements of the charge, the plea is involuntary.[126]

Courts vary on how much information the judge must give the defendant in order to satisfy the due process requirements of the United States Constitution.[127] Rule 11 of the Federal Rules of Criminal Procedure provides guidelines that ensure that the judge adequately informs the defendant of the defendant's rights and of the consequences of a guilty plea.[128] Rule 11 provides a solid basis

---

121. McCarthy v. United States, 394 U.S. 459, 465 (1969) (by "Rule," the *McCarthy* court referred to Rule 11 of the Federal Rules of Criminal Procedure).

122. *Id.*; *see also* Erickson, *supra* note 1, at 845.

123. *McCarthy*, 394 U.S. at 466.

124. BOND, *supra* note 1, § 3.6(b).

125. Henderson v. Morgan, 426 U.S. 637, 645 (1976).

126. *E.g.*, People v. Thomas, 276 N.W.2d 623 (Mich. Ct. App. 1979) (the district court failed to adequately inform the defendant about the charge).

127. BOND, *supra* note 1, § 3.6(b).

128. FED. R. CRIM. P. 11(c), (d), (f). Subsection (c) provides in pertinent part:

> Advice to Defendant. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:
>
> (1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, including the effect of any special parole or supervised release term . . . .

FED. R. CRIM. P. 11(c).

on which the states may construct clear and specific guidelines. According to one commentator, "A major purpose of the 1975 Amendments in expanding the Rule 11 record was to facilitate prompt disposition of post conviction attacks on guilty pleas."[129] Although state courts are not specifically bound by the federal Rule 11 procedural guidelines, many states have adopted guidelines similar to those of Rule 11.[130]

States specify the guidelines for acceptance and review of guilty pleas both in statutory[131] and case law.[132] The Tennessee Supreme Court, in *State v. Mackey*, required that extensive questioning of the defendant by the judge be conducted on the court record.[133] In addition to careful attention to the waiver of constitutionally protected rights, the court mandated that the district court ensure that the defendant understand:

> [t]he nature of the charge to which the plea is offered, and the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and, if applicable, that a different or additional punishment may result by reason of his prior convictions or other factors which may be established in the present action after the entry of his plea.[134]

The Michigan Supreme Court also has addressed the problem of how to ensure fairness for the defendant while protecting guilty pleas from post-conviction attack.[135] For example, the Michigan Supreme Court acknowledged the importance of establishing complete court records to discourage appeals of guilty plea convictions.[136] Similarly, *Cameron* has raised several issues that suggest that increased attention to judicial procedure in accepting guilty pleas, especially in Alford cases, could afford greater protection against collateral attacks on the convictions.[137]

---

129. Matthew T. Heartney, Note, *Rule 11 and Collateral Attack on Guilty Pleas*, 86 YALE L.J. 1395, 1405 (1977).

130. BOND, *supra* note 1, §§ 3.6(a), 3.7.

131. MICH. GEN. CT. R. 785.7 (1973) (speciying rules for acceptance of guilty pleas); *see also* MICH. CT. R. 6.101(F) (1985).

132. *See, e.g.*, Tennessee v. Mackey, 553 S.W.2d 337 (Tenn. 1977) (where the Tennessee Supreme Court specifically laid out guidelines for guilty pleas).

133. *Mackey*, 553 S.W.2d at 340-41.

134. *Id.* at 341.

135. *See, e.g.*, Michigan v. Jaworski, 194 N.W.2d 868 (Mich. 1972); Michigan v. Williams, 192 N.W.2d 466 (Mich. 1971).

136. *Jaworski*, 194 N.W.2d at 872 (the district court record showed that the defendant was advised of the right to trial by jury and the right to confront his accuser, but did not contain information about the right against self-incrimination); *Williams*, 192 N.W.2d at 474-75 (emphasizing the importance of bringing certainty into the law by using prescribed standards).

137. *Cameron*, 253 Mont. 95, 830 P.2d 1284.

V. Suggested Revisions to Montana Statutes

The Montana Legislature may effectively deal with the inherent conflict of Alford pleas in sex offense cases by: (1) prohibiting the use of the Alford plea in sex offense cases, or (2) revising the statutes governing the acceptance of the Alford plea in Montana to require more instruction by the district court concerning the consequences of the Alford plea.

A. Prohibiting the Alford Plea in Sex Offense Cases

Prohibition of the Alford plea in sex offense cases offers the simplest solution to the Alford plea conflict. Removing the Alford plea simply eliminates the threat of appeals based on the defendant's confusion or misunderstanding concerning the consequences of the plea. To limit the use of the Alford plea to non-sex-related crimes only, section 46-12-212(2) of the Montana Code should be amended to read:

> A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty to the offense if the defendant considers the plea to be in the defendant's best interest and if a factual basis exists for the plea. *However, a defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may not enter a plea of guilty to a sex offense.*[138]

The relative simplicity of this revision may be overshadowed, however, by the loss of an effective tool in the guilty plea process—one which offers benefits to both the defendant and the State. Despite the problems that the Alford plea raises in sex offense cases, Montana prosecutors and judges prefer that the plea remain available in sex offense cases as well as in other criminal cases.[139]

B. Revising the Statutes to Mandate Clearer Instructions

The second option open to the legislature, relatively minor revisions to Montana statutes, allows for the retention of benefits of the Alford plea. If the Alford plea is to be effectively used in sex offense cases, the Montana Legislature must revise the statutory guidelines now in place. The following suggestions are offered as minimum standards to guarantee that the defendant understands

---

138. The emphasized text denotes suggested additional language.

139. *See supra* note 12 and accompanying text for general discussions concerning the use of the Alford plea in the Montana criminal justice system.

the consequences of the Alford plea.[140]

First, section 46-12-210 of the Montana Code should mandate that the district court personally advise and question the defendant concerning the defendant's understanding of the guilty plea.[141] Section 46-12-210 now requires only that the court *determine* that the defendant understands the elements listed in the statute. *Cameron* exemplifies the inadequate record produced when the court merely relies on the defense counsel's statement that he has discussed the Alford plea with the defendant. The procedure currently required by section 46-12-210 does not guarantee that the defendant actually understands the nature and consequences of the guilty plea. To ensure that the district court provides a complete record concerning the defendant's understanding of the defendant's guilty plea, section 46-12-210 should include:

---

140. Although this Note is limited to a discussion of the Alford plea in Montana, the suggested statutory revisions offer increased effectiveness and efficiency in all guilty pleas.

141. MONT. CODE ANN. § 46-12-210 (1993). This statute now provides the following requirements for district court advice to the defendant:

> (1) Before accepting a plea of guilty, the court shall determine that the defendant understands the following:
>
> (a) (i) the nature of the charge for which the plea is offered;
>
> (ii) the mandatory minimum penalty provided by law, if any;
>
> (iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and
>
> (iv) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;
>
> (b) if the defendant is not represented by an attorney, the fact that he has the right to be represented by an attorney at every stage of the proceeding against him and that, if necessary, one will be appointed to represent the defendant;
>
> (c) that the defendant has the right:
>
> (i) to plead not guilty or to persist in that plea if it has already been made;
>
> (ii) to be tried by a jury and at the trial has the right to the assistance of counsel;
>
> (iii) to confront and cross-examine witnesses against the defendant; and
>
> (iv) not to be compelled to reveal personally incriminating information;
>
> (d) that if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;
>
> (e) that if the defendant's plea of guilty is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial; and
>
> (f) that if the defendant is not a United States citizen, a guilty plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.
>
> (2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1).

MONT. CODE ANN. § 46-12-210 (1993). At the time the Montana Supreme Court rendered the decision in *Cameron*, § 46-12-210(2) was not part of the statute. *See* MONT. CODE ANN. § 46-12-210 (1991).

> Before accepting a plea of guilty, the court shall, *on the record, inform the defendant about and* determine that the defendant understands *each* of the following: . . . .[142]

Second, section 46-1-210 should mandate that the district court advise the defendant in a sex offense case of the inherent conflict in entering an Alford plea in a sex offense case. The following provision should be added to section 46-12-210(1):

> (g) when applicable, that if the defendant pleads guilty to a sex offense while continuing to maintain innocence pursuant to section 46-12-212, the defendant will be unable to successfully complete the mandatory sex offender treatment program because of the program's requirement that a sex offender admit guilt as part of the sex offender's therapy, and therefore will be ineligible for a suspended sentence or parole.[143]

Liberally construed, and following the *Imlay* case, section 46-12-210(1)(a)(iii) may be interpreted to mean that the court currently must advise the defendant about the consequences of entering an Alford plea.[144] Relying on this provision, however, does not provide sufficient guidelines regarding district court instructions to the defendant concerning the possible conflict inherent in an Alford plea.

Third, the Montana Legislature should delete subsection (2) of section 46-12-210.[145] This subsection allows the court to accept a statement written by the defendant that the defendant acknowledges the information in section 46-12-210(1). By eliminating the requirement that the court personally inform and question the defendant concerning the information in section 46-12-210(1), subsection (2) removes the important safeguard of on-the-record interrogation by the court.

Fourth, the Montana Legislature should amend section 46-12-212(2) to require the district court, *on the record*, to fully question the defendant as to that defendant's understanding of each consequence of the Alford plea. Section 46-12-212 states:

> (1) The court may not accept a guilty plea without determining that there is a factual basis for the plea in charges of felonies or misdemeanors resulting in incarceration.
>
> (2) A defendant who is unwilling to admit to any element of

---

142. The emphasized text indicates additional language.

143. Although this warning may not necessarily alert the defendant to all the consequences, it would provide critical notice to the defendant.

144. The court in *Imlay* held that additional prison time resulting from maintaining innocence in a sexual assault case constituted a penalty. State v. Imlay, 249 Mont. 82, 90, 813 P.2d 979, 985 (1991).

145. For the text of subsection (2), see *supra* note 141.

> the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty to the offense if the defendant considers the plea to be in the defendant's best interest and if a factual basis exists for the plea.[146]

Subsection (2) should read:

> A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty to the offense if the defendant considers the plea to be in the defendant's best interest and if a factual basis exists for the plea. *The court shall not accept a guilty plea under this subsection unless the court, on the record, personally has advised the defendant about and inquired into the defendant's understanding of each element under section 46-12-210(1).*[147]

By allowing the district court to rely on the defendant's opinion that the plea is in the defendant's best interest, the legislature automatically places great emphasis on the defendant's understanding of the Alford plea and its consequences. To ensure the accuracy of the defendant's understanding of that plea, the court must carefully inquire into the defendant's understanding of the plea's consequences. Diligent questioning not only provides the defendant with needed information, but protects the court from collateral attacks on the plea based on lack of understanding or inadequate counsel.

The above suggestions for increasing the advice to defendants about the consequences of the Alford plea and increased questioning by the district court conform with the trend in criminal law. In *McCarthy v. United States*, the United States Supreme Court discussed the need for the district court's active involvement in ensuring the voluntariness of a guilty plea.[148] The Court in *McCarthy* stated, in referring to the requirements imposed by Rule 11 of the Federal Rules of Criminal Procedure:

> First, although the procedure embodied in Rule 11 has not been held to be constitutionally mandated, it is designed to assist the district judge in making the constitutionally required determination that a defendant's guilty plea is truly voluntary. Second, the Rule is intended to produce a complete record at the time the plea is entered of the factors relevant to this voluntariness determination. Thus, the more meticulously the Rule is adhered to, the

146. MONT. CODE ANN. § 46-12-212.

147. The emphasized language signifies the additional safeguards necessary to ensure the voluntariness of an Alford plea.

148. McCarthy v. United States, 394 U.S. 459, 465 (1969).

more it tends to discourage, or at least to enable more expeditious disposition of, the numerous and often frivolous post-conviction attacks on the constitutional validity of guilty pleas.[149]

The Court went on to say that: "By personally interrogating the defendant, not only will the judge be better able to ascertain the plea's voluntariness, but he also will develop a more complete record to support his determination in a subsequent post-conviction attack."[150]

Following the *McCarthy* case, the Supreme Court, in *Boykin v. Alabama*, affirmed the importance of following procedural guidelines in accepting a guilty plea.[151] The Court in *Boykin* stated: "What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of *what the plea connotes and of its consequences.*"[152]

Commentators, long before adoption of the Rule 11 federal guidelines for judicial inquiry into voluntariness, recommended that district courts thoroughly examine the defendant at the time a guilty plea is entered.[153] The increase in time spent in judicial questioning was thought to be well invested, considering the time saved by having fewer appeals.[154]

Consequently, suggested provisions for judicial procedures for accepting guilty pleas have included more advice from the judge followed by careful questioning concerning the voluntariness of the guilty plea.[155] One commentator has suggested that the judge should, in open court and on the record, "inform the defendant of the nature of the charges against him . . . and an explanation of the nature of probation, and the grounds for and consequences of revocation of probation or parole."[156] This advice to the court is consis-

149. *Id.*

150. *Id.* at 466.

151. Boykin v. Alabama, 395 U.S. 238 (1969).

152. *Id.* at 243-44 (emphasis added).

153. *See, e.g.*, Heartney, *supra* note 129.

154. *Id.* at 1405-06.

155. *See, e.g.*, Raymond I. Parnas, *Proposed Legislation Facilitating Discussion of Statutory Regulation of Plea Bargaining*, 13 AM. J. CRIM. L. 381 (1986).

156. *Id.* at 388; *see also* Shipley, *supra* note 3, at 1086 (stating that clear guidelines for the acceptance of the Alford plea must be implemented to ensure that defendant enters the plea voluntarily). Shipley's article supports the use of the Alford plea, but notes the importance of judicial procedure in the Alford plea process. *Id.* at 1086-89. Shipley's comments are consistent with the cases and secondary authority that cite a trend toward placing a larger burden on the district court to establish the defendant's understanding and voluntariness of the guilty plea.

tent with the general trend in both cases and secondary authority toward more detailed procedures in the acceptance of guilty pleas.

VI. Conclusion

The Alford plea offers benefits to both the State and the defendant when proper procedures are applied in its acceptance. Currently, however, the Alford doctrine is not an effective tool in the Montana criminal justice system when applied to guilty pleas in sex offense cases. An inherent conflict arises when a defendant in a sex offense case enters an Alford plea. As evidenced by *Cameron*, the defendant cannot maintain innocence as part of an Alford plea and successfully complete the sex offender treatment program that is part of the rehabilitation of sex offenders.

The Alford plea will continue to create problems in sex offense cases for both the State and the defendant unless the Montana Legislature takes action. The legislature should either make the Alford plea unavailable to defendants in sex offense cases or revise the statutes governing the procedure for the court's acceptance of the plea. Making the plea unavailable eliminates any possible benefits that may be gained by the plea; thus, it is the less attractive alternative. Statutory revision is the preferable choice. The necessary procedural revisions primarily involve both advice from the court to the defendant and the process of questioning the defendant to ascertain that the defendant understands the consequences of entering an Alford plea in a sex offense case. By implementing revisions to clearly establish guidelines for advice and acceptance in Alford plea cases, Montana may begin to experience the full benefits of fairness and efficiency that the Alford plea is meant to provide.